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December 24, 2020

Hon. Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, New York 10601-4150

MEMO ENDORSEMENT

Re: *Elavon, Inc. v. Northeast Advance Technologies, Inc., et al.*
Civ. Action No. 15-cv-7985(KMK)(PED)

Dear Judge Karas:

This Firm represents defendants Joel and Rivky Friedman in this case.

Earlier, I filed Objections to the December 10, 2020, Memorandum and Order of Magistrate Judge Paul E. Davison. (Dkt. No. 413) Further to the Objections, I submit this letter motion seeking a stay of the discovery that is the subject of the Objections—addressed to communications between the Friedmans and non-party Transmedia Payment Services, Ltd. (“Transmedia”).

The claims at issue involve claims of privilege. Therefore, the Court should stay enforcement of and compliance with the Order and a subsequent subpoena served by plaintiff Elavon, Inc., upon Transmedia pending a determination of the Objections. As the Second Circuit has recognized in analogous circumstances, “timing matters” as “[o]nce the ‘cat is out of the bag,’ the right against disclosure cannot later be vindicated.” *In re Roman Catholic Diocese of Albany, New York*, 745 F.3d 30, 36 (2014) (quoting *S.E.C. v. Rajaratnam*, 622 F.3d 159, 170 (2d Cir. 2010)) (original emphasis). As a result, the court issued a writ of mandamus to prevent the disclosure of confidential reports claimed to fall within the law-enforcement privilege since the petitioning parties would have no other adequate means to attain relief, as “a remedy after final judgment cannot unsay the confidential information that has been revealed.” *In re Roman Catholic Diocese of Albany, New York*, 745 F.3d at 36 (quoting *In re The City of New York*, 607 F.3d 923, 934 (2d Cir.2010)). The same reasoning warrants the issuance of a stay here. Once communications and documents exchanged among counsel and Transmedia are disclosed, there is no going back.


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Accordingly, this letter motion for a stay pending the determination of the Friedmans' Objections should be granted.

Thank you.


Respectfully submitted,


Meyer Y. Silber

By ECF

The Court grants the stay
pending the determination of
the Friedmans' Objections.

White Plains, NY
April 22, 2021

SO ORDERED

KENNETH M. KARAS U.S.D.J.